UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID MCGLYNN,
Plaintiff,

- against -

COLLIERS INTERNATIONAL NY LLC,

Defendant.

Docket No. 17-cv-02632

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff David McGlynn ("McGlynn" or "Plaintiff"), by and through his undersigned counsel, as and for his Complaint against Defendant Colliers International NY LLC ("Colliers" or "Defendant") hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant's unauthorized reproduction and public display of a copyrighted photograph of 4 Times Square owned and registered by McGlynn, a New York-based photojournalist. Accordingly, McGlynn seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq*.

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq*., and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. McGlynn is a professional photojournalist in the business of licensing his photographs to online, print, and television media outlets for a fee, having a usual place of business at 710 West 173 St. Apt. B, New York, New York 10032. McGlynn's photographs have appeared in many publications around the United States.

6. Upon information and belief, Colliers is a corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 380 Madison Avenue, New York, New York 10017. At all times material hereto, Colliers has owned and operated a website at the following URL: www.nycfundspaces.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. On October 7, 2015, McGlynn photographed the entrance to 4 Times Square, formerly known as the Condé Nast Building (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. McGlynn then licensed the Photograph to the New York Post (the "Post"). On October 7, 2015, the Post ran an article that featured the Photograph on its web edition entitled, *Desnudas aren't keeping tenants away from 4 Times Square*. See http://nypost.com/2015/10/07/desnudas-arent-keeping-tenants-away-from-4-times-square/. McGlynn's name was featured in a gutter credit identifying him as the photographer of the Photograph. A true and correct copy of the Photograph in the article is attached hereto as Exhibit B.

9. McGlynn is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph was registered with the U.S. Copyright Office and was given pending Copyright Registration Number VA 2-036-614.

B. Defendant's Infringing Activities

11. Upon information and belief, on or about August 10, 2016, Colliers ran an article on the Website entitled *Big business to return to 4 Times Square after Condé Departure*. See http://nycfundspaces.com/news/2016/8/9/big-business-to-return-to-4-times-square-after-cond-departure. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit C.

12. Colliers did not license the Photograph from Plaintiff for its article, nor did Colliers have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST COLLIERS
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Colliers infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on its Website. Colliers is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the aforementioned acts of infringement by Colliers have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

17. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover his damages and Defendant's profits pursuant to 17 U.S.C. § 504(b).

18. Defendant's conduct, described above, is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Colliers be adjudged to have infringed upon Plaintiff's copyright in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: April 12, 2017
Valley Stream, New York

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